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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 2009-171

13 **GRETCHEN OLVERA**
70 Ford Road
14 Carmel Valley, CA 93924

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of
20 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about August 2, 2008, Gretchen Olvera (Respondent) certified
23 under penalty of perjury to the truthfulness of all statements, answers, and representations in an
24 application for a Registered Nursing License. On or about August 6, 2008, the Board of
25 Registered Nursing, Department of Consumer Affairs (Board) received the application from
26 Respondent. The Board denied the application on September 15, 2008.
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3. This Statement of Issues is brought before the Board under the authority

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4. Code section 2736 provides, in pertinent part, that the Board may deny a

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1 7. Code section 2762 states, in pertinent part:

2 In addition to other acts constituting unprofessional conduct within
3 the meaning of this chapter it is unprofessional conduct for a
4 person licensed under this chapter to do any of the following:

5 (a) Obtain or possess in violation of law, or prescribe, or except as
6 directed by a licensed physician and surgeon, dentist, or podiatrist
7 administer to himself or herself, or furnish or administer to
8 another, any controlled substance as defined in Division 10
9 (commencing with Section 11000) of the Health and Safety Code
10 or any dangerous drug or dangerous device as defined in Section
11 4022.

12 (b) Use any . . . alcoholic beverages, to an extent or in a manner
13 dangerous or injurious to himself or herself, any other person, or
14 the public or to the extent that such use impairs his or her ability to
15 conduct with safety to the public the practice authorized by his or
16 her license.

17 (c) Be convicted of a criminal offense involving the . . .
18 consumption, or self-administration of any of the substances
19 described in subdivisions (a) and (b) of this section, or the
20 possession of . . . the substances described in subdivision (a) of
21 this section, in which event the record of the conviction is
22 conclusive evidence thereof.

23 8. Code section 2765 provides:

24 A plea or verdict of guilty or a conviction following a plea of nolo
25 contendere made to a charge substantially related to the
26 qualifications, functions and duties of a registered nurse is deemed
27 to be a conviction within the meaning of this article. The board
28 may order the license or certificate suspended or revoked, or may
29 decline to issue a license or certificate, when the time for appeal
30 has elapsed, or the judgment of conviction has been affirmed on
31 appeal or when an order granting probation is made suspending the
32 imposition of sentence, irrespective of a subsequent order under
33 the provisions of Section 1203.4 of the Penal Code allowing such
34 person to withdraw his or her plea of guilty and to enter a plea of
35 not guilty, or setting aside the verdict of guilty, or dismissing the
36 accusation, information or indictment.

37 9. Code section 4022 provides, in pertinent part:

38 “Dangerous drug” . . . means any drug or device unsafe for self-
39 use in humans or animals, and includes the following: . . .

40 (c) Any other drug or device that by federal or state law can be
41 lawfully dispensed only on prescription or furnished pursuant to
42 Section 4006.

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1 10. Code section 4060 provides, in pertinent part, that “[n]o person shall
2 possess any controlled substance, except that furnished to a person upon the prescription of a
3 physician . . .”

4 11. Penal Code section 1000, subdivision (d), provides that:

5 Deferred entry of judgment for a violation of Section 11368 of the
6 Health and Safety Code shall not prohibit any administrative
7 agency from taking disciplinary action against a licensee or from
8 denying a license. Nothing in this subdivision shall be construed to
9 expand or restrict the provisions of Section 1000.4.

10 REGULATORY PROVISIONS

11 12. California Code of Regulations, title 16, section 1444, states:

12 A conviction or act shall be considered to be substantially related
13 to the qualifications, functions or duties of a registered nurse if to a
14 substantial degree it evidences the present or potential unfitness of
15 a registered nurse to practice in a manner consistent with the
16 public health, safety, or welfare. . . .

17 DRUGS

18 13. “**Cocaine**” is a Schedule II drug as listed under section 11055, subdivision
19 (f)(6), of the Health and Safety Code and is a dangerous drug pursuant to Business and
20 Professions Code section 4022.

21 14. **Marijuana** is a Schedule I controlled substance as designated by Health
22 and Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to
23 Business and Professions Code section 4022.

24 15. **Drug paraphernalia** is defined by Health and Safety Code section
25 11364.5, subdivision (d), as follows: . .

26 [E]quipment, products, and materials of any kind which are
27 intended for use or designed for use, in . . . packaging,
28 repackaging, storing, containing, concealing, injecting, ingesting,
inhalng, or otherwise introducing into the human body a
controlled substance. "Drug paraphernalia" includes, but is not
limited to, all of the following: . . .

(9) Capsules, balloons, envelopes, and other containers intended
for use or designed for use in packaging small quantities of
controlled substances.

(10) Containers and other objects intended for use or designed for
use in storing or concealing controlled substances.

(12) Objects intended for use or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as the following:

(A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls. . . .

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of Crimes Substantially Related to Registered Nursing)

16. Respondent's application is subject to denial under Code sections 480, subdivision (a)(1), and 2761, subdivision (f), in that she was convicted of offenses substantially related to the qualifications, functions, and duties of a Registered Nurse, within the meaning of California Code of Regulations, title 16, section 1444. The circumstances are as follows:

a. On or about June 3, 2008, in the criminal proceeding People v. Gretchen Olvera, Monterey County Superior Court Case No. SS081027A, Respondent was convicted by guilty pleas of violating Health and Safety Code section 11350, subdivision (a), (Possession of a Narcotic/Controlled Substance), a felony, and Vehicle Code section 23152, subdivision (b), (Driving With .08% or more of Alcohol in her Blood), a misdemeanor, criminal offenses she committed on January 26, 2008.

b. Respondent was sentenced to serve 5 days in county jail and 5 years of informal probation. Respondent was ordered to participate in an 18-month drug diversion program, where upon completion, the guilty plea as to Health and Safety Code section 11350, subdivision (a), will be dismissed pursuant to the Penal Code section 1000 program. Respondent was also ordered to comply with additional terms and conditions.

c. The circumstances underlying the convictions are as follows: During a routine traffic stop by the Carmel Police Department, Respondent was observed to be intoxicated, disoriented, and to smell of alcohol. Respondent's blood alcohol level was .11% and .12% by volume. Cocaine, marijuana, and drug paraphernalia were found in her car and in her purse. Respondent admitted that she knew of the presence of the contraband.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 (Unprofessional Conduct: Possession of Controlled Substance)

3 17. Respondent's application is subject to denial under Code sections 2761,
4 subdivision (a), and 2762, subdivision (a), in that Respondent obtained or possessed in violation
5 of law, a controlled substance. The circumstances are more particularly set forth in Paragraph 16
6 and its subparts, above.

7 **THIRD CAUSE FOR DENIAL OF APPLICATION**

8 (Unprofessional Conduct: Use of Alcohol in a Dangerous Manner)

9 18. Respondent's application is subject to denial under Code sections 2761,
10 subdivision (a), and 2762, subdivision (b), in that Respondent used alcoholic beverages in a
11 manner dangerous or injurious to herself, any other person, or the public. The circumstances are
12 more particularly set forth in Paragraph 16 and its subparts, above.

13 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

14 (Unprofessional Conduct: Drug and Alcohol-Related Convictions)

15 19. Respondent's application is subject to denial under Code sections 2761,
16 subdivision (a), and 2762, subdivision (c), in that Respondent was convicted of offenses
17 involving the consumption of alcoholic beverages and the possession of a controlled substance.
18 The circumstances are more particularly set forth in Paragraph 16 and its subparts, above.

19 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

20 (Act Which if Done by Licentiate Would be Grounds for Suspension or Revocation)

21 20. Respondent's application is subject to denial under Code section 480,
22 subdivision (a)(3), in that Respondent committed acts, which if done by a licentiate of the
23 business or profession in question, would be grounds for suspension or revocation of license.
24 The circumstances are more particularly set forth in Paragraphs 16 -19 and their subparts, above.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Gretchen Olvera for a Registered Nursing License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 2/17/09


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2008402949